

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

RODNEY DEWAYNE GASTON, #12881078 §

VS. § CIVIL ACTION NO. 9:07cv160
CRIMINAL ACTION NO. 9:06cr2
UNITED STATES OF AMERICA §

ORDER ADOPTING REPORT AND RECOMMENDATION

The Court referred the above-entitled and numbered civil action to United States Magistrate Judge Judith K. Guthrie. The Magistrate Judge presented for consideration the Magistrate Judge's Report, containing proposed findings of fact and recommendations for disposition of this case. Respondent filed objections to the Report.

This Court made a *de novo* review of Respondent's objections and determined that they lack merit. This Court finds that the Magistrate Judge's findings and conclusions are correct, and adopts them as the Court's findings and conclusions. The Court therefore

ORDERS that Respondent's motion to dismiss (dkt#13) is **DENIED**;

ORDERS, ADJUDGES, and DECREES that Petitioner's motion to vacate/correct illegal sentence pursuant to 28 U.S.C. § 2255 is **GRANTED** to the extent that he receive an out-of-time appeal, and in all other regards the motion to vacate/correct illegal sentence is **DISMISSED WITHOUT PREJUDICE**. The ten day deadline for filing a notice of appeal begins to run at the time the judgment is entered.

The Court further

ORDERS that all motions not previously ruled on are denied.

So **ORDERED** and **SIGNED** this **26** day of **March, 2008**.



Ron Clark, United States District Judge